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AUG 31 2009

OFFICE OF PETITIONS

In re Application of  
Richard Cogswell  
Application No. 10/800,466  
Filed: March 15, 2004  
Attorney Docket No. 06694-0003001

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:  
: LETTER REGARDING  
: PATENT TERM ADJUSTMENT  
:

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT", filed December 9, 2008. Pursuant to their duty of good faith and candor to the Office, applicants note that the patent term adjustment pursuant to 35 U.S.C. 154(b) of 800 days indicated on the Determination of Patent Term Adjustment, PTOL-85, may be longer than appropriate.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The PTA at the time of the mailing of the notice of allowance is 798 days.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is seven hundred ninety-eight (798) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On September 19, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 800 days. Applicants direct the office to the action dated March 23, 2008 where the Applicant should have allotted more time loss and the PTO should not have a 58 day delay.

A review of the record reveals that the initial determination of patent term adjustment of 800 days is incorrect.

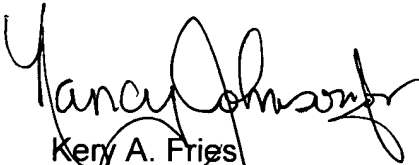
A response to a Final Office Action mailed October 31, 2007 was incorrectly listed as having been filed on March 23, 2008. Thus, instead of a 60 day reduction for applicant delay pursuant to 37 C.F.R. §1.704(b), 61 days should have been accorded. Accordingly, the Office added 58 days of additional patent term for the mailing of the Notice of Allowance on September 19, 2008 and the Office's failure pursuant to 37 CFR 1.702(a)(2). However, since the proper date of the applicant reply was March 24, 2008, the proper amount of additional PTA relating to the Office reply should have been 57 days rather than the 58 days awarded.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance should have been 798 days rather than 800 days listed on the notice of allowance.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.



Kerry A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Examination Policy

Enclosure: Copy of Revised PALM Screen

Day : Friday  
Date: 8/28/2009

# PALM INTRANET

Time: 16:19:24

## PTA Calculations for Application: 10/800466

Application Filing Date:	03/15/2004	PTO Delay (PTO):	860
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	60
Post-Issue Petitions:	0	Total PTA (days):	798
PTO Delay Adjustment:	-2		

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20	04/24/2007	MISCELLANEOUS INCOMING LETTER			
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15	05/23/2005	MISCELLANEOUS INCOMING LETTER			
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12	03/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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9	10/26/2005	MISCELLANEOUS INCOMING LETTER			
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### EXPLANATION OF PTA CALCULATION

### EXPLANATION OF PTE CALCULATION

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